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No. 297

IN THE

Supreme Court of the United States

October Term, 1958

GREAT NORTHERN RAILWAY COMPANY,
a corporation,
Appellant,

vs.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, and CENTENNIAL MILLS, INC.,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

JURISDICTIONAL STATEMENT

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT
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JURISDICTIONAL STATEMENT

Appellant appeals from the final order of the United States District Court for the District of Minnesota entitled "Memorandum Decision," dated and entered May 15, 1959,

dismissing its action to permanently enjoin and set aside an order of the Interstate Commerce Commission.

OPINIONS BELOW

The decision of the United States District Court for the District of Minnesota from which this appeal is taken is reported at 172 F. Supp. 705. A copy thereof is attached as Appendix A. Subsequently said court granted an injunction pending appeal. A copy of the Findings of Fact; Conclusions of Law and Injunction Pending Appeal dated and entered July 24, 1959, which are unreported, is attached as Appendix B.

The Interstate Commerce Commission's report accompanying the order sought to be enjoined and set aside is reported at 304 I.C.C. 491, and a copy is attached as Appendix C. A copy of the proposed report of the Commission's examiner is attached as Appendix D.

JURISDICTION

This suit was brought pursuant to Sections 1336, 1398, 2284, and 2321-2325, Title 28, U.S.C.A., to permanently enjoin an order of the Interstate Commerce Commission dated July 14, 1958, as subsequently modified in respect to its effective date. Said order requires appellant, a common carrier by railroad in interstate commerce, and certain connecting rail carriers, to establish and maintain from various origin points on appellant's lines to destinations on the lines of other rail carriers joint rates and through routes, with specified transit privileges, for the transportation of wheat and wheat products. After notice and hearing, the United States District Court for the District of Minnesota on May

15, 1959, entered an order denying a permanent injunction and dismissed appellant's complaint. Notice of appeal was filed in that court June 12, 1959. Jurisdiction of the Supreme Court to review this decision is conferred by Title 28 U.S.C.A., Sections 1253 and 2101(b). The following decisions sustain the jurisdiction of this Court to review this case on direct appeal: *Denver & Rio Grande Western Railroad v. Union Pacific Railroad*, 351 U. S. 321, 327 (1956); *Thompson v. United States*, 343 U. S. 549, 554 (1952); *United States v. Great Northern Railway Co.*, 343 U. S. 562, 568 (1952).

STATUTES INVOLVED

Sections 3(1), 3(4), 3(5), 15(3) and 15(4) of the Interstate Commerce Act, as amended (49 U.S.C.A. Secs. 3(1), 3(4), 3(5), 15(3) and 15(4)) are set forth in Appendix E hereto.

QUESTIONS PRESENTED

1. May undue prejudice and preference in violation of Section 3(1) of the Interstate Commerce Act (49 U.S.C.A. Sec. 3(1)) result from the refusal of an originating railroad to short-haul itself by joining in through routes and joint rates with another, independent railroad, with transit on the lines of the latter railroad, to reach destinations which are also reached, with transit, over existing routes in which the originating carrier participates and which afford it a greater haul?

2. Is there substantial evidence to support the Interstate Commerce Commission's finding under Section 3(1) of the Interstate Commerce Act (49 U.S.C.A. Sec. 3(1))?

3. Is said Commission's order invalid because it will require the establishment of a new through route short-hauling an originating railroad without findings under either clause (a) or clause (b) of Section 15(4) of the Interstate Commerce Act (49 U.S.C.A. Sec. 15(4))? This question includes the following subsidiary question: Did said Commission's finding of undue preference and prejudice under Section 3(1) of the Interstate Commerce Act make inapplicable the short-hauling limitation upon the Commission's power to prescribe through routes as such limitation is set forth in said Section 15(4), and dispense with the necessity for findings under clauses (a) and (b) thereof?

4. Is there substantial evidence in the record to support said Commission's finding that the prescribed new through route and joint rates are "necessary and desirable in the public interest" as required by Section 15(3) of said Act (49 U.S.C.A. Sec. 15(3))?

STATEMENT

On June 19, 1956, Preston-Shaffer Milling Company operated a flour mill at Milton-Freewater, Ore., located on the lines of the Union Pacific* between Spokane, Wash., and Portland, Ore. Milton-Freewater is also reached by the

*The complete names of the railroads and the short names by which they will be referred to herein, are as follows: Great Northern Railway Company, as the Great Northern; Union Pacific Railroad Company, as the Union Pacific; The Atchison, Topeka and Santa Fe Railway Company, as the Santa Fe; Chicago, Milwaukee, St. Paul and Pacific Railroad Company, as the Milwaukee; Northern Pacific Railway Company, as the Northern Pacific; Southern Pacific Company, as the Southern Pacific; Spokane, Portland & Seattle Railway Company, as the SP&S; and Western Pacific Railroad Company as the Western Pacific.

Northern Pacific's lines between Spokane and Portland. The outline map, Appendix F, attached shows the principal points in Washington and Oregon and the routes through western junctions which are here involved.

On that date, the Preston-Shaffer Company filed a complaint with the Interstate Commerce Commission alleging that the combination rates applicable on wheat and wheat products in carloads from origins in Montana on appellant's (Great Northern's) lines east and south of Cut Bank, including Cut Bank, to destinations in Oregon south of Portland and in California over the route of the Great Northern to Spokane, the Union Pacific to Portland, and connections beyond, with transit at Milton-Freewater were unjust and unreasonable in violation of Section 1 of the Interstate Commerce Act, unduly prejudicial to complainant and its traffic and unduly preferential of its competitors on other routes over which joint rates apply, in violation of Section 3 of said act. Preston-Shaffer requested the Commission to prescribe just, reasonable and nonprejudicial joint rates with transit via Milton-Freewater and, if the Commission should find that through routes do not exist for the traffic described via complainant's milling point, that it require establishment of such through routes under the provisions of Sections 15(3) and 15(4) of said act. (304 I.C.C. 491-492, *infra*, pp. 38-39). During the course of the Commission proceeding Preston-Shaffer sold its flour mill at Milton-Freewater to Centennial Mills, Inc., one of the appellees, which has been operating the mill since May 1, 1957. Centennial operates flour mills not only at Milton-Freewater but also at Spokane and Wenatchee, Wash., and at Portland. An officer of Centennial originally testified for appellant in the Commission proceeding, but after the change in ownership

Centennial adopted the testimony for Preston-Shaffer and was substituted for it as the complainant before the Commission, (304 I.C.C. 492, *infra*, p. 39.)

There have long been in effect joint rates on wheat and wheat products applicable from all of the origins to all of the destinations here involved, with transit at intermediate milling points, at the level which Centennial seeks. But such joint rates do not apply via the lines of the Union Pacific between Spokane and Portland, on which Milton-Freewater is located. Instead they apply via routes giving the Great Northern system a greater share of the haul. Such routes embrace the Great Northern extending from Montana, through Spokane, to Portland or Chemult, Ore., thence Southern Pacific and its connections to destination; or Great Northern to Bieber, Calif., thence Western Pacific and its connections to destination; or Great Northern to Spokane, thence its subsidiary, the SP&S, to Portland, thence Southern Pacific and its connections to destination. (See map, Appendix F.) Each of Centennial's mills at Spokane, Wenatchee and Portland is on one or more of these routes. Joint rates at the level sought also apply from a portion of the Montana origin territory here involved to California via the Great Northern to Butte, Mont., thence Union Pacific and its connections, a route established by the Commission over Great Northern opposition.

At the turn of the century and before Great Northern reached Portland with its own lines or those of the SP&S, it established joint rates on wheat and wheat products from all of the origins here involved applicable via Great Northern to Spokane, thence as far as Portland over a route embracing the lines of the Oregon Railroad and Navigation Company beyond Spokane. At that time this was the only route over

which Great Northern shippers reached Portland by rail. Such rates were continued in effect via that route after the Oregon Railroad and Navigation Company was acquired by the Union Pacific. The privilege of milling in transit at Milton-Freewater is available in connection with these joint rates to Portland.

Under the long-standing rate and routing adjustment outlined above, if wheat from a particular Montana origin, e.g., Chester, were milled into flour at Milton-Freewater and thence shipped either to a destination in Oregon south of Portland or to California, there would be added to the joint through rate from Chester to Portland, the separately published rate of the Southern Pacific from Portland to destination. The combination of these two rates would result in a total charge on wheat from Chester milled at Milton-Freewater, and terminated as flour at San Francisco, for example, of $1.49 per hundred pounds. If terminated at Los Angeles the charge would be $1.77 per hundred pounds. However, the joint rate from Chester to California applicable over a route giving appellant its longer haul, with milling in transit at Wenatchee, for example, is $1.18½ per hundred pounds for termination at either San Francisco or Los Angeles. The lower joint rates applicable over routes according the originating carrier a greater share of the haul attract the traffic to such routes and that is their purpose. There is no evidence that the carriers here involved hold themselves out to perform through service from Montana origins on the Great Northern either to California or to southern Oregon over routes via Milton-Freewater, and both the Commission and its examiner have found that any such through routes via Milton-Freewater do not exist. (304 I.C.C. 494-497, *infra*, pp. 41-42, 47-48, 67.)

The Commission's examiner Edward L. Boisseree issued a proposed report recommending that the Commission find that the assailed combination rates on the involved traffic via Milton-Freewater were not shown to be unreasonable or unduly prejudicial; that through routes on such traffic via Milton-Freewater for transit were not shown to be necessary or desirable in the public interest under Section 15(3) of the Act; and that the complaint should be dismissed. In arriving at the recommended conclusion with respect to Section 15(3), the examiner specifically considered the conditions in clauses (a) and (b) of Section 15(4) which are required to be met before a carrier may be short-hauled against its consent, and determined that the conditions in neither of said clauses had been satisfied. (Appendix C, *infra*, at pages 68-73.)

After oral argument upon exceptions to the recommended report, the Commission's Division 2 reversed the examiner and found that defendants' failure to establish joint rates on the described traffic over routes through Milton-Freewater, with transit at that point, was unduly prejudicial to complainant's mill there located and unduly preferential of competitors' mills located on routes over which joint rates presently apply. The Division further found it to be necessary and desirable in the public interest that the unlawfulness so found to exist be removed by the establishment of joint rates over routes via Milton-Freewater with transit thereat. The Division did not consider, nor did it make findings upon, the question whether the evidence met any of the conditions set forth in clauses (a) and (b) of Section 15(4), relating to short-hauling. An order was entered July 14, 1958, in accordance with the findings in the Division's report. (*infra*, pp. 50-52.)

Great Northern petitioned the entire Commission for reconsideration. The petition was denied December 1, 1958.

The suit in the court below was filed January 12, 1959; and an order was entered by the District Court on January 15, 1959, temporarily restraining enforcement of the Commission's order. The entire record before the Commission was received in evidence by the court below. In the memorandum decision above referred to the district court held that the Commission's finding of undue preference and prejudice in violation of Section 3(1) of the Act was sustained by the evidence and was within the Commission's statutory power; that the prohibition against short-hauling in Section 15(4) does not apply in cases wherein undue prejudice or preference in violation of Section 3 is established; and that the Commission's order in other respects was based on substantial evidence and was lawful. The complaint was dismissed and the restraining order discharged. A stay of 30 days was granted.

Thereafter, the court ordered an extension of the 30-day stay and continued the restraining order in effect pending determination of appellant's application for an injunction pending appeal. The injunction was granted July 24, 1959, upon the conclusion, *inter alia*, that "decision in this case depends upon a question of law on which there appears to be a conflict among the several district courts of the United States" (*infra*, *p.* 35.)

THE QUESTIONS PRESENTED ARE SUBSTANTIAL

I.

Squarely presented here is the question whether a railroad which does not participate in a proposed through route and which does not have the power to control the granting or withholding of transit at a specified station thereon may, nevertheless, because of its contemporaneous participation in other routes between the same origins and destinations and its grant of transit at intermediate stations on such other routes, be found guilty of undue prejudice and preference in violation of Section 3(1) of the Interstate Commerce Act. Also presented is the further, related question whether a finding of prejudice and preference under such circumstances deprives such carrier of the protection against short-hauling contained in Section 15(4).

Determination of the first question does not depend simply on whether the person denied the proposed route is at a disadvantage compared with some other shipper on another route. The question is whether the alleged advantages and disadvantages can be held in law attributable to appellant. *Central R. R. Co. v. United States*, 257 U. S. 247, 255 (1921).

Under an identical fact situation, the United States District Court for the District of Nebraska in *Union Pacific R. R. Co. v. United States*, 132 F. Supp. 72 (1954), reached a conclusion directly contrary to the decision of the lower court in the instant case. In *Union Pacific*, confronted with the very contentions which were urged upon the district court in this case, the three-judge court said, at page 80:

"* * * The prohibition of Sec. 3(1) is intended to prevent a carrier from giving preferences or advantages, over which the carrier has control, to one of the entities named and not to another. It does not apply to a situation such as this where the comparison of preferences and advantages or prejudices and disadvantages is between the entities named when they are located on the lines of different carriers not acting in concert or collusion. Although the factual situation in Central R. Co. of New Jersey v. United States, 257 U. S. 247, loc. cit. 259-260, 42 S. Ct. 80, loc. cit. 83, 66 L. Ed. 217, was different, the purpose of Sec. 3(1) was there stated as follows:

"'What Congress sought to prevent by that section, as originally enacted was not differences between localities in transportation rates, facilities and privileges, but unjust discrimination between them by the same carrier or carriers. Neither the Transportation Act 1920, February 28, 1920, c. 91, 41 Stat. 456, nor any earlier amendatory legislation has changed, in this respect, the purpose or scope of §3.'

"*If the Commission could order through routes and joint rates between two or more competing railroads under Sec. 3(1) merely because a shipper entity described in Sec. 3(1) located on one railroad had a transportation advantage over such an entity located on the other railroad, the prohibition of Sec. 15(4) would be practically emasculated. The evidence of preference, advantage, prejudice or disadvantage, under these circumstances, furnishes no basis for the order under Sec. 3(1).*" (Emphasis supplied.)

In the *Union Pacific* case it was claimed that combination rates maintained by the Union Pacific and Rio Grande* were unduly prejudicial to shippers located on the Rio Grande desiring to use in-transit privileges at joint through rates

*The Denver & Rio Grande Western Railroad Company.

and preferential of shippers on the routes of the Union Pacific who were able to avail themselves of such privileges at joint through rates (*id.*). The similarity of the facts to those presented here is obvious. The conflict between the results in the two cases, as we have indicated, was recognized by the lower court here when it granted the injunction pending appeal (*infra*, p. 35.)

The decision in *Union Pacific* was appealed to the Supreme Court and was disposed of in *Denver & Rio Grande Western R. Co. v. Union Pacific R. Co.*, 351 U. S. 321 (1956), but this Court did not reach the Section 3(1) matter now discussed. This Court said, at page 355:

> "Since the Commission's order is justified under §§ 15(1), 15(3) and 15(4), we have no occasion to consider contentions raised under §§3(1) and 3(4)."

The district court here attempted to justify its conclusion that the Commission's finding of a Section 3(1) violation deprived defendant of the protection of Section 15(4) by pointing to the fact that Section 15(4) by its terms prohibits short-hauling "except as provided in section 3," and by citing *Baltimore & O. R. Co. v. United States*, 100 F. Supp. 1002 (S.D. New York, 1951) (*infra*, p. 27). But the reference in Section 15(4) to "section 3" is to subdivisions of Section 3 other than subdivision (1). Section 3(1) simply prohibits the giving of undue preferences and the imposition of undue prejudice in general terms and has, as the cases cited indicate, been uniformly construed as prohibiting only undue differences in treatment which the same carrier or same group of carriers, acting in concert, control. *Central R. R. Co. v. United States*, 257 U. S. 457,

459. Section 3(1) does not in terms forbid retention of a carrier's long haul. On the other hand, discrimination between carriers in the granting or withholding of routes is specifically prohibited by Section 3(4). And the opening of a carrier's terminal facilities to the use of other carriers, which may have the effect of reducing its haul, is authorized by Section 3(5). The parenthetical provision of Section 15(4), "except as provided in section 3," and the addition of Section 3(5) to the Interstate Commerce Act both came into the law at the same time with passage of the Transportation Act of 1920, 41 Stat. 456, 479, 485-6.

The lower court's reliance on the *Baltimore & Ohio* case was misplaced. Though that court did state that participation in through routes which accord a carrier its maximum haul and contemporaneous refusal to participate in proposed routes which would require short-hauling may constitute a violation of Section 3(1) and that such violation will deprive a carrier of the protection against short-hauling afforded by Section 15(4), the entire discussion of this matter in the *Baltimore & Ohio* case is *obiter dicta*. The Commission in the report there under review—unlike the report of Division 2 in the instant case—had made findings under Section 15(4), which justified its order requiring short-hauling. In other words, it had come to grips with the fact that defendants in that case would be short-hauled by the relief sought, and it specifically found under clause (b) of Section 15(4) "that the through routes [sought] were needed in order to provide adequate and more economic transportation." This finding was found to be based on substantial evidence (100 F. Supp. 1002, 1010-1011). That being so, the district court, like the Supreme Court in *Denver & Rio*

Grande v. Union Pacific, supra, had no occasion to consider contentions raised under Section 3(1).

Had the evidence in this case been sufficient, the Commission could have made a finding here, under either clause (a) or clause (b), as the law set forth in Section 15(4) requires it must do before a participating carrier may be short-hauled. Significantly, it did not find either (a) that existing routes were unreasonably long or (b) that the routes via Milton-Freewater sought were necessary to provide adequate, and more efficient or more economic transportation.

The Commission points out that Great Northern presently participates in joint rates and through routes via Milton-Freewater as far as Portland and states that "by extending its participation in joint rates to this destination territory, the unlawfulness herein found to exist will be removed." It cites *New York v. United States*, 331 U. S. 284, 340-341; and *Ayrshire Collieries v. United States*, 335 U. S. 573, 593-594, as sustaining its authority to prescribe the manner of removing the unlawfulness it believed to exist. (*infra*, p. 50.)

The cited decisions, however, do not sustain the Commission's asserted authority. They involved the Commission's power to establish *rates*, not *routes*. In neither case was the issue presented as to the Commission's power to establish through routes under Sections 15(3) and 15(4). And in each case the Commission merely exercised its power under Section 15(1) to prescribe rates. Whatever may be the Commission's power under Section 15(1) to prescribe rates, its power to establish *through routes* is not granted by Section 15(1) but must be found in Section 15(3) as limited by Section 15(4).

Great Northern's participation in through routes as far as Portland did not constitute the establishment of any routes beyond Portland. As this Court said in *Thompson v. United States*, 343 U. S. 549, at page 559:

> "Through service to points short of Omaha cannot be used as evidence of the existence of a through route to Omaha * * *."

There a Commission order prescribing a rate under Section 15(1) over a route in which the appellant had declined to participate, because it would deprive it of its long haul, was set aside because the Commission failed to comply with Section 15(3) as limited by Section 15(4).

In summary, this appeal presents a court holding which disregards the decisions of this Court that the same carrier, or combination of carriers, must be the common source of the disparity in treatment complained of before a violation of Section 3(1) may be found, and presents a lower court decision which, as the district court stated in *Union Pacific*, permits Section 15(4) to be "practically emasculated." The importance of this appeal is indicated by the emphasis placed in the majority opinion in *Denver & Rio Grande v. Union Pacific*, *supra*, upon—

> "the purpose of §15(4) to bar the Commission from compelling railroads to establish through routes resulting in trunkline 'short-hauls' without faithful observance of restrictive conditions imposed by that section" (351 U. S. at p. 327),

and by the following language taken from the principal dissenting opinion:

"Although Congress has, from the time of the Commission's creation and especially in recent years, relied on the Commission as its expert adviser on policy, and legislation has largely reflected the Commission's recommendations, the latter's persistence in recommending repeal of §15(4) has been matched and overborne by the persistence of Congress in retaining it. Congress has emphatically made clear that in its view the national interest requires the protection of railroads against being short-hauled." (351 U. S., at p. 336)

II.

The remaining questions relate to the sufficiency of the evidence to sustain the Commission's finding under Section 3(1) as to undue prejudice to Centennial's mill at Milton-Freewater and preference of competitors' mills located on routes over which joint rates apply, and the sufficiency of the evidence to sustain the Commission's finding that the routes via Milton-Freewater are necessary and desirable in the public interest under Section 15(3).

Centennial's mills at Spokane, Wenatchee and Portland, located on through routes for the movement of wheat and its products from Montana to southern Oregon and to California, have a combined capacity which represents 82 percent of Centennial's total milling capacity. They now have available the joint rates and the transit privileges which complainant in the case before the Commission seeks to have compelled via Milton-Freewater, where it has a mill representing 18 percent of its total capacity. Heretofore Centennial's sales in California of flour produced from mills on the existing through routes constituted 30 percent of its production at those mills. On the other hand, 70 percent of the production of the mill at Milton-Freewater is being

disposed of in California. Total sales in California from the Milton-Freewater plant are increasing. This increase has been achieved despite the rate disparity by the substitution of tonnage or switching of billing, which is permissible under the tariffs. (*infra*, pp. 44, 55, 71-73.)

At the hearing before the Commission exhibits were introduced showing numerous milling points in Oregon and Washington and other states. There was testimony that mills located on the various railroads in these states are with very few exceptions confined in their operations to wheat which they can deliver from shipping points on the railroads serving the mills; i.e., that cross-hauling of grain is not generally permitted from origins on one railroad to a transit location on another. For example, the mill at Wenatchee, Wash., on the Great Northern, cannot draw wheat from Milwaukee, Union Pacific or Northern Pacific origins for transit and reshipment to southern Oregon or California. Thus the Commission by its order would accord complainant's mill at Milton-Freewater an advantage which most mills at other transit points are not permitted.

In the proposed report the examiner states:

> "With the substitution of the present complainant (originally indicated to be unjustly preferred by rates and routes maintained by the Great Northern over routes via mills at Spokane, Wenatchee, and Portland) the issue under section 3(1) is not stressed" (*Infra*, p. 73.)

And further, after a recital of the pertinent facts:

> "The evidence is not sufficient to support a finding of unlawfulness under section 3(1) of the act" (*Infra*, pp. 73-74.)

These matters, together with the financial interest of appellant in the maintenance of its long haul on this important traffic, the wasteful and inefficient transportation which establishment of cross-haul routing encourages, and the public interest in the maintenance of existing routes and channels of trade on which business has been established, which cannot be adequately discussed in a jurisdictional statement, will be brought out on brief to show that the evidence is insufficient to sustain the Commission's findings either that complainant is unduly prejudiced in violation of Section 3(1) or that the routes ordered are necessary and desirable in the public interest under Section 15(3).

CONCLUSION

We submit that the questions presented by this appeal are substantial and that they are of public importance.

Respectfully submitted,

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Dated August 7, 1959.

PROOF OF SERVICE

I, LOUIS E. TORINUS, JR., one of the attorneys for appellant, and a member of the bar of the Supreme Court of the United States, hereby certify that on the 7th day of August, 1959, I served copies of the foregoing Jurisdictional Statement on the adverse parties, as follows:

1. On appellee United States of America by mailing a copy in a duly addressed envelope with air mail postage prepaid to:

Honorable William P. Rogers
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Honorable J. Lee Rankin
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and with first-class postage prepaid to:

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2. On appellee Interstate Commerce Commission by mailing a copy in a duly addressed envelope with air mail postage prepaid to:

Mr. Robert W. Ginnane
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3. On appellee Centennial Mills, Inc., by mailing a copy in a duly addressed envelope with air mail postage prepaid to:

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LOUIS E. TORINUS, JR.
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APPENDIX A

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

GREAT NORTHERN RAILWAY COMPANY, a corporation, Plaintiff,

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants,

and

CENTENNIAL MILLS, INC.,
Intervening Defendant.

4-59-Civ-5

MEMORANDUM DECISION

[172 F. Supp. 705]

Anthony Kane, General Counsel, Seattle, Wash., L. E. Torinus, General Solicitor, St. Paul, Minn., Robert F. Gar-

ing, Assistant General Attorney, Seattle, Wash., Curtis H. Berg, Attorney, Seattle, Wash., attorneys for plaintiff Great Northern Railway Company.

Victor R. Hansen, Assistant Attorney General, Washington, D. C., Fallon Kelly, United States Attorney, St. Paul, Minn., John H. D. Wigger, Attorney, Department of Justice, Washington, D. C., attorneys for defendant United States of America.

Robert W. Ginnane, General Counsel, Francis A. Silver, Associate General Counsel, Interstate Commerce Commission, Washington, D. C., attorneys for defendant Interstate Commerce Commission.

S. J. Wettrick, Seattle, Wash., attorney for intervening defendant Centennial Mills, Inc.

Before VOGEL, Circuit Judge, NORDBYE, Chief Judge, and DEVITT, District Judge.

DEVITT, District Judge.

This is an appeal from an order of the Interstate Commerce Commission establishing joint rates for the movement of wheat and wheat products from certain Montana points on the lines of the Great Northern Railway Company to points in Oregon, south of Portland, and to California [172 F. Supp. 706]. Statutory jurisdiction is established.

The issue was raised in 1956 by Preston-Shaffer Milling Company by the filing of a complaint with the Interstate Commerce Commission alleging that certain combination rates then in effect in the described area were unjust, un-

reasonable and unduly prejudicial to it and unduly preferential to its competitors on other routes over which the more advantageous joint rates applied, all in violation of Section 3(1) of the Interstate Commerce Act (49 U.S.C.A. 3(1)), which, among other things, prohibits unreasonable prejudice and preference.

The matter was fully heard by a Hearing Examiner. The complainant, Preston-Shaffer, subsequently sold its mill at Milton-Freewater, Oregon, the place allegedly discriminated against by the Great Northern, to Centennial Mills, Inc., which company is an intervening defendant in this appeal.

The Hearing Examiner filed his report recommending dismissal of the complaint. Subsequently, on July 14, 1958, the Commission, Division 2, issued its report finding that the failure of the plaintiff to establish joint rates on the described traffic from Montana to the Oregon and California points, with transit at the Milton-Freewater location, was unduly prejudicial to the complainant's mill there, and was unduly preferential of competitor's mills located on routes over which joint rates did apply. The Commission also ordered the establishment of joint rates not in excess of the lowest joint rates then in effect over competing routes. 304 ICC 491 (1958).

On December 1, 1958, the entire Commission denied a petition for reconsideration of the order of its Division 2, and this appeal followed.

A short explanation of the issue in the light of the undisputed facts may be helpful.

For about the last ten years the mill at Milton-Freewater, Oregon, in the east-central section of the state, has been engaged principally in the milling of bread flour for California bakeries. This flour requires wheat with a high protein con-

tent. This type of wheat is grown principally in the central and north-central areas of Montana where hard spring wheat is raised in large volume. Approximately 79 percent of the wheat originating in these areas is produced at places adjacent to the lines of the Great Northern. The Milton-Freewater mill has, in recent years, obtained 90 percent or more of its wheat supply from locations served by the plaintiff.

There are several flour mills in the northwestern states engaged in milling flour from hard spring wheat for the California market. There are mills at Spokane and Tacoma in Washington, at Portland, Oregon, at Great Falls, Montana, Ogden, Utah and elsewhere. The business is highly competitive.

Wheat purchased by Centennial Mills is moved over the route of the Great Northern to Spokane, Washington, over the Union Pacific to Milton-Freewater, there processed into flour, and again carried by Union Pacific to Portland, Oregon. This entire movement is made under a joint rate, against which no objection is raised. But further movement of the shipment to points south of Portland and to California stations is made under the regularly applicable non-joint rate. The resulting combination rate between Montana stations and points south of Portland and in California is appreciably higher than the joint rate now enjoyed by Centennial's competitors over different, but similar, routes to the same destinations.

To illustrate the alleged discrimination by figures from the Commission's report, the present joint rate available to competing mills on other lines from certain Montana points to San Francisco or Los Angeles is $1.18½ per 100 pounds, while the combination rate available to complainant's mill at Milton-Freewater is $1.49 to San Francisco and $1.77 to

Los Angeles, or 30½ cents and 58½ cents higher than the joint rate. This is the discrimination against which Centennial [172 F. Supp. 707] complains and which the Commission held violated Section 3(1).

The Great Northern contends that there is no substantial evidence in the record to support the action of the Commission in ordering the joint rate, and that doing so and establishing a new through route will substantially short haul it in contravention of its right to the long haul secured by Section 15(4) of the Interstate Commerce Act (49 U.S.C.A. 15(4)).

In determining the issues before us, it is well to recall that the authority of the courts in reviewing the actions of administrative bodies is very limited. We are confined to determining whether there is warrant in the law and the facts for the Commission's action. That is the limit of our province. We cannot substitute our judgment for that of the Commission or challenge the wisdom of its action. *United States v. Pierce Auto Freight Lines, Inc.*, 327 U. S. 515, 535, 536, 66 S. Ct. 687, 90 L. Ed. 821 (1946); *Federal Security Administrator v. Quaker Oats Co.*, 318 U. S. 218, 227, 228, 63 S. Ct. 589, 87 L. Ed. 724 (1943). For further recent expressions recognizing our circumscribed authority in this respect, see *Quickie Transport Co. v. United States*, 169 F. Supp. 826 (D. C. Minn. 1959); *Minneapolis & St. Louis Ry. Co. v. United States*, 165 F. Supp. 893 (D. C. Minn. 1958); *Canadian Pacific Ry. Co. v. United States*, 158 F. Supp. 248 (D. C. Minn. 1958); *Schaffer Transportation Co. v. United States*, 139 F. Supp. 444, 448 (N.D.S.D. 1956) reversed on other grounds, 355 U. S. 83, 78 S. Ct. 173, 2 L. Ed. 2d 117 (1957).

We have reviewed the record and conclude that there is substantial evidence, considered as a whole, to support the Commission's finding and order.

From the summary of facts recited above and from other evidence in the record, the Commission could well find that complainant's mill at Milton-Freewater was in a disadvantageous competitive position because of the higher rate it was charged. The action of the Commission in concluding that the failure of the Great Northern to establish joint rates constituted undue prejudice to Centennial and undue preference to its competitors within the meaning of Section 3(1) of the Interstate Commerce Act is supported by the evidence and is not unreasonable.

We have examined each of the arguments advanced by Great Northern in support of its view that the evidence does not support the Commission's action, including its contention that no actual prejudice to Centennial has been shown, that Centennial has not lost business under the present combination rates, that by the continued use of "switch billing" any disadvantages could be minimized or obviated, and that Centennial is free to shift its California flour milling operations to one of its other mills where the joint rate is obtainable, and conclude that no purpose will be served by detailed discussions and observations about them. Suffice it to say that they do not convince us that the action of the Commission is unsupported by proof.

Plaintiff also contends that Congress has guaranteed each rail carrier the right to the longest haul possible on its own lines and to the revenue thus obtainable, and that this order deprives it of the long haul and will result in substantial loss of revenue.

The long haul assurance is contained in Section 15(4) of the Interstate Commerce Act, set out in the footnote[1], but [172 F. Supp. 708], as will be observed by the underlined portion in the second line, the prohibition against short hauling does not apply to cases under Section 3 of the Act. The Commission took action here under Section 3.

In effect the Congress has permitted the Commission to short haul where undue prejudice or preference is established. *Baltimore & Ohio Ry. Co. v. United States*, 100 F. Supp. 1002 (S.D.N.Y. 1951).

[1] "In establishing any such through route the Commission shall not (*except as provided in section 3 of this title,** and except where one of the carriers is a water line) require any carrier by railroad, without its consent, to embrace in such route substantially less than the entire length of its railroad and of any intermediate railroad operated in conjunction and under a common management or control therewith, which lies between the termini of such proposed through route, (a) unless such inclusion of lines would make the through route unreasonably long as compared with another practicable through route which could otherwise be established, or (b) unless the Commission finds that the through route proposed to be established is needed in order to provide adequate, and more efficient or more economic, transportation: *Provided, however*, That in prescribing through routes the Commission shall, so far as is consistent with the public interest, and subject to the foregoing limitations in clauses (a) and (b) of this paragraph, give reasonable preference to the carrier by railroad which originates the traffic. No through route and joint rates applicable thereto shall be established by the Commission for the purpose of assisting any carrier that would participate therein to meet its financial needs. In time of shortage of equipment, congestion of traffic, or other emergency declared by the Commission, it may (either upon complaint or upon its own initiative without complaint, at once, if it so orders, without answer or other formal pleadings by the interested carrier or carriers, and with or without notice, hearing, or the making or filing of a report, according as the Commission may determine) establish temporarily such through routes as in its opinion are necessary or desirable in the public interest." [*Emphasis added]

The Great Northern states that as a result of the Commission's order it will suffer a minimum direct loss of $36,000.00 annually and a probable additional loss, through application of the lower joint rate to other mills, in excess of $115,000.00 per year. The Commission recognized this fact and made reference to it in its report 304 ICC at p. 497. But the fact that the order adversely affects the economic interests of the carrier is not grounds for denying the validity of it. *Seaboard Air Line Ry. Co. v. United States*, 131 F. Supp. 129 (E.D. Va. 1954) aff'd per curiam 349 U. S. 902, 75 S. Ct. 579, 99 L. Ed. 1239 (1955). The United States Supreme Court has observed that "self-interest of the carrier may not override the requirement of equality in rates." *United States v. Illinois Central Ry. Co.*, 263 U. S. 515, 524, 44 S. Ct. 189, 68 L. Ed. 417 (1923).

We have fully considered all of the arguments and contentions of the plaintiff and view them as being without merit. Our conclusion is that the Commission's order is based on adequate findings supported by substantial evidence in the record before it, and that the Commission properly exercised its authority under the law and that its action was not unreasonable, arbitrary, or capricious.

The plaintiff's complaint is dismissed and the temporary restraining order is discharged. A stay of 30 days is granted.

Dated: May 15, 1959.

Charles J. Vogel
United States Circuit Judge

Gunnar H. Nordbye
United States District Judge

Edward J. Devitt
United States District Judge

APPENDIX B

DISTRICT COURT OF THE UNITED STATES
DISTRICT OF MINNESOTA
FOURTH DIVISION

Civil Action No. 4 59 Civ. 5

GREAT NORTHERN RAILWAY COMPANY, a corporation, Phaintiff,

vs.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants,

and

CENTENNIAL MILLS, INC.,
Intervening Defendant.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND INJUNCTION PENDING APPEAL

The above-entitled matter came duly on for hearing before the court above named on Monday, the 22nd day of June, 1959, at 10:00 o'clock a.m., on the petition of the plaintiff for an injunction restraining and enjoining the enforce-

ment of the order of the Interstate Commerce Commission entered July 14, 1958, as thereafter amended, in its Docket No. 32015, *Preston-Shaffer Milling Company v. Great Northern Railway Company, et al.*, during the pendency of an appeal taken by the plaintiff herein to the Supreme Court of the United States from the final order of the court herein dated May 15, 1959. Plaintiff was represented by its counsel, Louis E. Torinus, Jr.; defendants United States of America and Interstate Commerce Commission were represented by C. Paul Jones, Assistant United States Attorney; and Centennial Mills, Inc., intervening defendant, was represented by its attorney, S. J. Wettrick. There were no other appearances. Upon all the files and records herein, including said petition for an injunction pending appeal, the affidavit attached thereto, and the affidavits and memoranda submitted by the parties on June 22, 1959, and full hearing and argument having been had, the court, being fully advised, makes the following findings of fact:

1. The Interstate Commerce Commission by Division 2 made its report and order in its Docket No. 32015, entitled "Preston-Shaffer Milling Company v. Great Northern Railway Company, et al.," dated July 14, 1958, wherein the said Commission ordered the plaintiff herein, Great Northern Railway Company, to establish upon not less than thirty (30) days' notice to the Commission and to the public, and thereafter to maintain and apply to the transportation of wheat and wheat products, in carloads, from points in Montana on the lines of the Great Northern Railway Company east and south of Cut Bank, Montana, including Cut Bank, Montana, to points in Oregon south of Portland and to points in California on the lines of the Southern Pacific Company and The Atchison, Topeka and Santa Fe Railway

Company over the routes of the Great Northern Railway Company to Spokane, Union Pacific Railroad Company to Portland, Oregon, with transit at Milton-Freewater, Oregon, thence the Southern Pacific (in connection with The Atchison, Topeka and Santa Fe Railway Company to destinations on the lines of the latter carrier), rates which shall not exceed the lowest joint rates concurrently in effect from and to the same points over other rail routes: Said order dated July 14, 1958, was stayed pending disposition of a petition for reconsideration filed with said Commission subsequent to July 14, 1958. By order dated December 1, 1958, said Commission denied plaintiff's petition for reconsideration and modified said order of July 14, 1958, which had meanwhile been stayed pending disposition of said petition, so as to become effective January 16, 1959, without change in the requirements of said order. On January 13, 1959, plaintiff received telegraphic advice from the Commission that said order had been further modified so as to become effective February 16, 1959.

2. On January 15, 1959, this court made and filed herein its temporary restraining order restraining and enjoining the operation, application and effectiveness of said order of the Interstate Commerce Commission dated July 14, 1958, as theretofore modified, until the further hearing and order of this court herein. On January 19, 1959, said Commission entered its further order in said Docket 32015 reciting that "solely in obedience to said temporary restraining order" the effective date, operation and effectiveness of said order of the Commission, Division 2, dated July 14, 1958, as modified, be postponed and suspended until the further order of the Commission.

3. On May 15, 1959, this action for a permanent injunction enjoining, setting aside and annulling said order of the Commission, as amended, having been submitted to this court upon the pleadings, the briefs of the parties, and a hearing held before this court on April 7, 1959, at which the court received in evidence the record before the Interstate Commerce Commission in said Docket 32015, this court made and filed its memorandum decision and order dismissing the plaintiff's complaint, discharging said temporary restraining order and granting a stay of thirty days.

4. On June 12, 1959, plaintiff filed herein a notice of appeal to the Supreme Court of the United States from said memorandum decision and order of May 15, 1959, said notice of appeal being accompanied by proof of service on the several parties to this proceeding.

5. On June 12, 1959, this court filed herein its order dated June 11, 1959, setting for hearing on June 22, 1959, a petition by plaintiff for an injunction restraining and enjoining the enforcement of said Commission's order pending appeal, said order filed June 12, 1959, also providing that the stay which was granted on May 15, 1959, and hereinbefore referred to be extended and continued in effect until the hearing and determination of said petition for injunction pending appeal.

6. It appears from the affidavit of Ernest F. McGuire, copy of which is attached to said petition for an injunction pending appeal, that if said injunction is not granted, plaintiff will be required to establish by appropriate tariff publication the new through routes and joint rates described in said order of the Commission, that such action will result in a minimum loss of revenue to the plaintiff of $36,846 per year, and that this loss will be irretrievable. It appears from

the affidavit of Vincent P. Brown submitted June 22, 1959, that compliance with said order would result in complaints on the part of operators of numerous flour mills not located on the lines of plaintiff, for treatment equivalent to that accorded to the mill at Milton-Freewater referred to in the Commission's decision in its Docket 32015; that if such complaints were not resisted, plaintiff would sustain further substantial, irretrievable revenue losses; that plaintiff's 1958 traffic in grain and grain products produced $60,211,106 in freight revenue, of which $32,639,200 represented revenues from the transportation of wheat; and that in 1958, grain and grain product revenues constituted 26 percent of plaintiff's total system revenues from carload shipments for that year.

7. It appears from the affidavit of Moritz Milburn submitted June 22, 1959, that Centennial Mills, Inc., has thus far been able to retain its business in California by the substitution of billing; that this is becoming increasingly difficult and expensive; that unless the relief granted by said order of the Interstate Commerce Commission is made effective in the near future Centennial Mills, Inc., will be unable to retain this business, which will probably make it necessary to shut down its Milton-Freewater mill; that Centennial Mills, Inc., under present conditions, in order to obtain billing to ship to California, unloads wheat at Spokane originating on the Great Northern and reships such wheat to Milton-Freewater; that this operation at Spokane is inconvenient and costs approximately $10,000 per year plus storage expenses; and that because of the absence of joint rates to points in Oregon south of Portland, shipments to such points from Milton-Freewater have resulted in the assessment of freight charges higher by about $6,000 per year than would be the case if joint rates were available.

8. In the event plaintiff should comply with said order of the Interstate Commerce Commission pending appeal, it would be deprived of the protection against short-hauling provided in Section 15(4) were the Supreme Court to hold said order invalid and plaintiff thereupon attempted to cancel such compliance. In such event, in attempting to cancel the routes and rates required by said order, plaintiff would become subject to the provisions of Section 15(3) of the Interstate Commerce Act, which provides that if a through route or joint rate is sought to be canceled "without the consent of all carriers parties thereto or authorization by the Commission," the Commission may suspend such proposed cancellation and in such event the carrier proposing cancellation has the burden of proving such cancellation consistent with the public interest without regard to the provisions of Section 15(4). This circumstance, together with the circumstances described in the affidavits referred to in finding No. 6 herein, indicates that any revenue losses sustained by plaintiff as a result of compliance with the Commission's order might well continue to be experienced long after the termination of said appeal even if its appeal were successful, and constitutes a special reason why the order of the Commission ought not to become operative until its validity can be determined by the Supreme Court of the United States.

9. Plaintiff has filed with this court a bond conditioned to indemnify Centennial Mills, Inc., in the event of affirmance of this court's decision and order of May 15, 1959, or dismissal of its appeal, against the payment of freight charges pending appeal on the involved traffic in excess of charges which would become applicable were an injunction pending appeal not granted, and against the payment by

Centennial, pending appeal, of inspection, handling and storage charges at Spokane on wheat originating at the Montana points involved, unloaded at Spokane and reshipped to Milton-Freewater.

10. The injury which plaintiff would suffer from compliance with the said order of the Interstate Commerce Commission if this court's order of May 15, 1959, should finally be held invalid appears to be greater than any injury which defendants or the intervening defendant Centennial Mills, Inc., might suffer if this court's order were upheld and the operation and effectiveness of the Commission's order were stayed pending appeal upon the filing of the bond referred to in paragraph No. 9 hereof. The desirability in the public interest of avoiding disruption of existing rates and routing applicable to the grain traffic until the validity of the Commission's order shall be finally determined is also a factor which weighs against any considerations in favor of denying the injunction.

CONCLUSIONS OF LAW

1. Decision in this case depends upon a question of law on which there appears to be a conflict among the several district courts of the United States.

2. Considering all the circumstances set forth in the above findings, the court concludes that it should exercise its discretion by ordering the entry of an injunction restraining and enjoining the operation, application and effectiveness of said order of the Interstate Commerce Commission pending appeal, said injunction to continue until the final determination of said appeal or the further order of the court herein or of the United States Supreme Court.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the plaintiff's petition for an injunction pending appeal be, and it hereby is, granted and that the operation, application and effectiveness of said order of the Interstate Commerce Commission in its Docket 32015, *Preston-Shaffer Milling Company v. Great Northern Railway Company, et al.*, dated July 14, 1958, as thereafter modified, be, and they hereby are, restrained and enjoined pending plaintiff's appeal to the United States Supreme Court from the memorandum decision and order of this court dated May 15, 1959, and until final determination on such appeal and order pursuant thereto, unless and until otherwise ordered by this court or by the Supreme Court of the United States.

Dated this 24th day of July, 1959.

Charles J. Vogel
United States Circuit Judge
Gunnar H. Nordbye
United States District Judge
Edward J. Devitt
United States District Judge

APPENDIX C

INTERSTATE COMMERCE COMMISSION

[304 I.C.C. 491]

No. 32015

PRESTON-SHAFFER MILLING COMPANY[1]

v.

GREAT NORTHERN RAILWAY COMPANY, ET AL.

Decided July 14, 1958.

Failure of defendants to establish joint rates on wheat and wheat products, in carloads, from origins in Montana to destinations in Oregon south of Portland and in California, over routes through Milton-Freewater, Ore., found unduly prejudicial and preferential. Basis for removal of unlawfulness prescribed.

S. J. Wettrick for complainant.

R. Paul Tjossem and *Robert F. Garing* for defendants.

[1] Predecessor in interest to Centennial Mills, Inc., Seattle, Wash., as explained in the report.

REPORT OF THE COMMISSION
DIVISION 2, COMMISSIONERS WINCHELL, MURPHY, AND MINOR.

BY DIVISION 2:

Exceptions to the report proposed by the examiner were filed by the complainant, and the defendants replied. We have heard the parties in oral argument. Our conclusions differ from those recommended. Exceptions and requested findings not discussed in this report nor reflected in our findings or conclusions have been considered and found not justified.

By complaint filed on June 19, 1956, the Preston-Shaffer Milling Company, a corporation then engaged in the operation of flour mills and adjoining elevators at Waitsburg, Wash., and Milton-Freewater and Athena, Ore., alleges that the combination rates[2] applicable on wheat and wheat products, in carloads, from Cut Bank, Mont., and stations in Montana east and south thereof on the Great Northern Railway Company,[3] to destinations in Oregon south of Portland, and in California on the Southern Pacific and the Santa Fe, over the route of the Great Northern to Spokane, Wash., the Union Pacific to Portland, and connections be-

[2]Rates and differences in rates are stated per 100 pounds, and are those in effect on October 1, 1956.

[3]The complete names of the railroads and the short names by which they will be referred to herein, are as follows: Great Northern Railway Company, as Great Northern; Union Pacific Railroad Company, as Union Pacific; The Atchison, Topeka and Santa Fe Railway Company, as Santa Fe; Chicago, Milwaukee, St. Paul and Pacific Railroad Company, as the Milwaukee; Northern Pacific Railway Company, as Northern Pacific; and Southern Pacific Company, as Southern Pacific.

yond, with transit at Waitsburg, Milton-Freewater, and Athena, are unjust, unreasonable, unduly prejudicial [304 I.C.C. 492] to its mills, and unduly preferential of its competitors on other routes over which joint rates apply. We are asked to prescribe just, reasonable, and nonprejudicial joint rates for the future and, if necessary, to require the establishment of through routes under the provisions of section 15(3) and (4) of the Interstate Commerce Act.

During the progress of the proceeding, Preston-Shaffer sold its flour mill at Milton-Freewater to Centennial Mills, Inc., of Seattle, which has been operating the mill since May 1, 1957. Centennial also owns and operates flour mills at Spokane and Wenatchee, Wash., and at Portland. Centennial originally participated in this proceeding in support of the Great Northern, but because of the change in interest it now adopts the testimony of Preston-Shaffer, and, upon request, it has been substituted as the complainant herein. The flour mills at Waitsburg and Athena are no longer operating, and the allegations with respect to those points will not be further considered.

Since 1925, with the development of large bakeries and the trend toward commercial production of bread, flour mills in the Pacific Northwest have been active in the California market, where the deficit flour production amounts to about 9 million hundredweight annually. The mill at Milton-Freewater is located in northeastern Oregon and is served by the Union Pacific and Northern Pacific. It has a capacity of 2,400 hundredweight of flour per day. Since about 1947 it has been used primarily in the milling of flour for California commercial bakeries. Prior to that time, Preston-Shaffer supplied those bakeries from a mill at Pendleton, Ore. When the latter mill was destroyed by fire in 1947,

the production of bakery flour moved to the other mills, which prior to that time were used generally for the production of family flour.

Wheat produced in Washington, Oregon, and Idaho is not generally suitable for milling into bakery flour; in 1955, soft white wheat, used for pastry and cake flour, amounted to about 90 percent of the total wheat production in those States. Most of the wheat grown in Montana is either so-called hard winter or hard spring wheat. Hard winter wheat is generally used for family flour. Hard spring wheat has a higher protein content and a higher gluten quality, which produces flour able to withstand handling in the bakeries and to provide a large loaf volume. In recent years the commercial bakeries have insisted upon specifications in their flour orders which require the milling of hard spring wheat. All bakery flour is milled from varying proportions of such wheat.

Western millers obtain their supply of wheat for bakery flour generally from the central and north central areas of Montana, the freight rates from these areas being lower to the Pacific Coast than to Minneapolis and Duluth, Minn., the eastern markets. About 79 percent [304 I.C.C. 493] of Montana spring wheat originates in the north or north central areas adjacent to the lines of the Great Northern, and the remainder is produced along the lines of the Milwaukee. From 1950 to 1955, about 280 million bushels of wheat were produced in central Montana, or an annual average of 46 million bushels, about equally divided between the winter and spring varieties. However, during that period a significant change developed. Hard spring wheat declined from 26.3 million bushels in 1950 to 13.4 million bushels in 1955, and from 59 to 27 percent of total harvested acreage, while

during the same period hard winter wheat increased from 12 million to 42 million bushels, and from 31 to 73 percent of the total acreage. The shift in production was due to the better resistance of winter wheat to winter damage, and its greater average yield which more than offsets the higher prices paid for spring wheat.

Formerly, Preston-Shaffer obtained from 35 to 52 percent of its spring-wheat requirements from origins on the Milwaukee. However, in recent years the production of spring wheat has been largely concentrated in the more northerly areas adjacent to the lines of the Great Northern, and in the 1955-56 crop year Preston-Shaffer was able to obtain only about 9 percent of its requirements from Milwaukee origins. There have been instances, particularly during 1955, when Pacific Northwest flour mills had to purchase spring wheat in northeastern Montana from which the freight rates to the Pacific Coast are higher than to the eastern markets. Joint rates from origins on the Great Northern in eastern Montana over routes via the Milton-Freewater mill are also sought in this proceeding.

Rates on wheat and wheat products from Montana origins to Pacific Coast points were prescribed in *Grain and Grain Products*, 205 I.C.C. 301 and 215 I.C.C. 83. From the central and north central areas of Montana, a base rate of 39 cents was prescribed to North Pacific terminals, including Portland, which with subsequent general increases has become 72 cents. It applies from Montana origins on the Great Northern to Portland over the route of the originating carrier to Spokane and the Union Pacific beyond. Transit is accorded under that rate at Milton-Freewater. However, when traffic originated at those Montana points and transited at Milton-Freewater moves to destinations in Oregon south of Portland

and in California, the rates from Portland to the destinations are added to the 72-cent rate. To San Francisco, for example, the rate from Portland is 77 cents, resulting in a combination rate of $1.49, and to Los Angeles the combination is $1.77.

While at the time of the cited proceeding, joint rates were published from Montana to California only over routes through Seattle, Wash., and Portland to afford the originating carriers their long [304 I.C.C. 494] hauls, the carriers were required to establish the joint rate of 65 cents prescribed therein also over the short routes through Butte, Mont. Routes from the Montana origins via Spokane, Milton-Freewater, and Portland to California were not considered therein, but subsequently the Northern Pacific and Milwaukee established joint rates over those routes from Montana origins on their lines. With the addition of subsequent general increases, the 65-cent rate has become $1.185, and that is the present joint rate from the Montana origins to both San Francisco and Los Angeles over through routes provided in the tariffs. It is 30.5 and 38.5 cents less than the assailed combination rates to those respective points. To Oregon destinations south of Portland, the combinations exceed the joint rates by amounts ranging from 7 cents at Salem to 15.5 cents at Klamath Falls.

The distances from Chester, Mont., as a representative origin, over the lines of the Great Northern to Spokane, the Union Pacific (via Milton-Freewater) to Portland, and the Southern Pacific beyond, are 1,639 miles to San Francisco and 2,012 miles to Los Angeles. Over the route of the Great Northern to Chemult, Ore., and the Southern Pacific beyond, the distances are 1,435 miles to San Francisco and 1,808 miles to Los Angeles, and over the Great Northern to Port-

land and the Southern Pacific beyond they are 1,701 and 2,074 miles, respectively. The distances over the route via Milton-Freewater thus compare favorably with those over existing through routes, and no material difference in operating conditions over any of these routes is indicated.

Prior to World War II, Preston-Shaffer obtained the necessary grain in Montana. It was milled in transit, and the flour was shipped to Portland under the joint rail rates, and from Portland by water to California destinations. From 1938 to 1941, the rail-water rates from Montana to San Francisco and Los Angeles were lower than the all-rail rates from and to the same points. During World War II, the water service was discontinued, but the water-competitive port-to-port rail rates between Portland and California were continued in effect until September 1, 1947, when this Commission withdrew fourth-section relief for the maintenance of those rates, and thereafter the normal rail rates applied.

Following the cancellation of the port-to-port rail rates, Preston-Shaffer requested the Great Northern to establish the joint rates over routes via its mills, but further negotiations were delayed pending a final decision in *General Mills, Inc. v. Great Northern Ry. Co.*, 269 I.C.C. 457, sustained in *Great Northern Ry. Co. v. United States*, 81 F. Supp. 921, 336 U. S. 933. In that proceeding, the Great Northern maintained through routes and joint rates on wheat and wheat products from points on its lines in central Montana through Butte to [304 I.C.C. 495] points in California. When transit was accorded at Great Falls, Mont., an intermediate point over those routes, the defendant collected charges based on combination rates. On the same route, milling in transit was permitted by other lines at points south of Butte. The failure

to establish transit privileges at Great Falls in connection with the established joint through rates to and from the considered points over routes through Butte was found unreasonable and unduly prejudicial. Following the decision in that proceeding, negotiations were resumed, but after the Great Northern advised that it would not join in the publication of the joint rate over the route sought via Milton-Freewater, the present complaint was filed.

The assurance of continued access to the California market is the objective of the complainant. Preston-Shaffer's sales to California bakeries ranged from 922,000 hundredweight in 1951 to 1,018,000 hundredweight in 1955, and averaged about 70 percent of its total production. It was able to continue its sales in California and even increase them slightly, despite the rate disparity, by the substitution of tonnage or switching of billing. This practice, permitted by appropriate tariff provisions, enables the miller by surrender of the inbound billing to take an allowance equal to the freight charges paid on the movement of grain from any origin to the transit point, and to ship the milled product beyond the transit point at the remainder or balance of the rate applicable from the origin of the grain for which billing is surrendered to the ultimate destination of the milled product.

To secure the most favorable freight charges on flour moved from Milton-Freewater to destinations south of Portland, even though milled from grain originated at origins on the Great Northern, Preston-Shaffer would surrender billing for grain originated at other points from which joint rates applied, such as those in Montana on the Milwaukee or at points in Washington and Oregon where the company purchases white wheat.

Flour movements from Milton-Freewater to California points south of Stockton and San Jose have been limited by the amount of wheat originated by Preston-Shaffer at the Milwaukee origins in Montana. On flour movements to northern California destinations, Preston-Shaffer surrendered billing on grain from origins in Washington and Oregon. Because an increasing proportion of its wheat requirements moved from Montana origins on the Great Northern, there was an insufficient amount of substitute billing to move flour to California destinations at charges competitive with mills having available the joint through rates. A further complication has been the disposition of inbound billing on grain from origins on the Great Northern. From July 1, 1955 to June 30, 1956, Preston-Shaffer purchased some 55 million pounds of wheat at Great Northern origins. The billing [304 I.C.C. 496] on 37 million pounds was used to move flour and mill feed to Portland and adjacent points to which joint rates were applicable, and the balance was about equally divided between export shipments of flour and wheat through North Pacific ports.

On some shipments of flour and mill feed, Preston-Shaffer was compelled to pay the combination rates over Portland because of a lack of the necessary billing. These movements were restricted to destinations in Oregon to which the difference between the combinations and the joint rates was comparatively small. During the crop year 1955-1956, it shipped some 8 million pounds of flour and mill feed to southern Oregon destinations, on which it paid approximately $6,000 more in transportation charges than it would have paid if billing had been available to enable it to move that tonnage at the joint rates. No shipments were made

to California destinations on which the combination rates over Portland were paid.

Although the complainant operates mills located on routes over which the joint rates are applicable, it pursues the objectives originally sought by Preston-Shaffer because the Milton-Freewater mill is engaged largely in the milling of bread flour for the California bakeries. An important consideration in acquiring that mill was the fact that, unlike the complainant's other mills, it is equipped to load cars with bulk flour. Since handling in bulk form is more economical, some of the large California bakeries are converting their operations to receive flour in that manner, and it is expected to become the common practice.

The Great Northern maintains that it will lose substantial revenue if required to establish through routes and joint rates via Milton-Freewater. Of the flour sold by Preston-Shaffer in California during 1955-1956, the volume made from Montana spring wheat is estimated at 39,660 tons. Distributing those tons to California destinations in the same ratios as the tons terminated at those destinations bore to the total tons of wheat and flour from Montana to California in the year 1955, the Great Northern estimates that its revenue from the present joint rates for the haul to Portland would be $506,774, or $12.77 a ton. Out of the present joint rates from origins to Portland via Spokane, its estimated revenue on 39,660 tons is $347,422, or $8.76 a ton. The average distances from origins in Montana having an annual wheat production of a half million bushels or more are 1,016 miles to Portland and 503 miles to Spokane. The distance from Spokane to Portland is 370 miles, or about 42 percent of the total average distance via Spokane to Portland. The Southern Pacific would retain its share of the joint rates beyond

Portland. Division of the revenue to Portland on a mileage prorate basis, at the above estimations, would result in 58 percent of $506,774 or $293,931 accruing to the Great Northern, the [304 I.C.C. 497] equivalent of $7.41 a ton. The loss to the Great Northern, measured by the difference between its share of the present joint rates from origins via Spokane to Portland and of its share of the joint through rates sought via Spokane to the California destinations, as computed above, would amount to $1.35 a ton. In addition, it fears additional losses from extensions of the joint rate which might be sought in the future by other mills.

While the complainant takes the position that through routes presently exist from the Montana origins to the considered destinations and that we can require the application of the joint rates without regard to section 15(3) and (4), alternatively it maintains that the evidence warrants the prescription of through routes under those provisions. As stated in *Thompson v. United States*, 343 U. S. 549, the existence of a through route depends upon the circumstances of the particular case, and that (page 557): "In short, the test of the existence of a 'through route' is whether the participating carriers held themselves out as offering a through transportation service." The evidence shows that the originating carrier's traffic officials have refused to accede to several requests for the establishment of the joint rates over routes through Milton-Freewater, and that course of action strongly indicates that there is no holding out to perform through service over such routes. Nor do the shipments made by the complainant at the combination rates to Oregon destinations south of Portland establish such holding out. In *Denver & R. G. W. R. Co. v. Union P. R. Co.*,

351 U. S. 321, 329, a limited movement at higher combination rates was held to be insufficient evidence of the existence of through routes.

Section 15(3) empowers us to establish through routes and joint rates whenever deemed by us "to be necessary or desirable in the public interest." The Great Northern contends that under that section we must determine that there is some "actual necessity" or some "compelling reason" to find that the sought through routes are in the public interest. In this connection it is pointed out, and it was observed in the proposed report, that no representatives of either the California commercial bakeries or of the Montana wheat producers, groups which the complainant asserted would be benefited, offered evidence that the present routes are inadequate or that the relief sought is needed. In *D. A. Stickell & Sons, Inc. v. Alton R. Co.*, 255 I.C.C. 333, upheld by the Supreme Court in *Pennsylvania R. Co. v. United States*, 323 U. S. 588, it was stated, at page 338:

> The Pennsylvania also contends that the routes sought are not "necessary and desirable" in the public interest because of the fact that "the complaint was not supported by any shipper of grain or its products at points of origin, by any receiver of mixed feed at destinations or by producers or consumers of grain in the Cumberland Valley" and because of the fact that "upon the record there [304 I.C.C. 498] is no basis for assuming that any of these are dependent upon the transit operation being performed at Hagerstown."

In *Cancelation of Rates and Routes via Short Lines*, 245 I.C.C. 183, the Commission said: "The words 'necessary and desirable' do not in either case connote indispensability."

In *Flory Milling Co. v. Central New England Ry. Co.*, 93 I.C.C. 129, the Commission said, at page 133:

> It is true that no producers of the inbound commodities, retailers of complainant's products, or ultimate consumers appeared at the hearing to testify that they would be benefited by the joint rates asked. It may also be true that retailers and consumers encounter no great difficulty in securing an adequate supply of grain products and mixed feeds from mills located on established routes over which joint rates with transit apply. But an individual shipper is entitled to the reasonable use of existing transportation facilities at reasonable rates, rules, and regulations measured in the light of the business and transportation practices in the industry in which he is engaged.

There is no dispute that the marketing of flour is a highly competitive business. The evidence shows that hard spring wheat is essential to the milling of flour which meets the specifications of the commercial bakeries, and that the producing region of hard spring wheat has been receding to the Montana area served by the Great Northern. Although the complainant's predecessor had been able to remain competitive at points in this destination territory by resorting to the substitution of billing, the changing production picture is making that procedure most difficult by limiting available billing and causing an accumulation of billing which cannot be used to ship flour to those destinations at rates comparable to the joint rates available to its competitors. In addition to the close surveillance of all inbound billing which the complainant has been compelled to practice, during the last crop year it leased space at Spokane

where about 250,000 bushels, delivered on Great Northern billing, were stored and later shipped out on billing which could be used to reach the considered destinations. It is estimated that the transaction cost the complainant $10,000 in addition to storage charges. In these circumstances, we conclude that the continued refusal of the Great Northern to concur in the publication of joint rates from origins on its lines through Milton-Freewater to destinations in Oregon beyond Portland and in California, with transit at Milton-Freewater, is and will be unduly prejudicial to the mill of Milton-Freewater and unduly preferential of competing mills located on routes presently enjoying the joint rates.

As previously observed, the Great Northern presently participates in joint rates via Milton-Freewater as far as Portland. By extending its participation in joint rates to this destination territory, the unlawfulness herein found to exist will be removed. Our authority to prescribe the manner of removing such unlawfulness was sustained [304 I.C.C. 499] in *New York v. United States*, 331 U. S. 284, 340-341, and *Ayrshire Collieries v. United States*, 335 U. S. 573, 593-594.

We find that the failure of the defendants to establish joint rates on the described traffic over routes through Milton-Freewater, with transit at that point, is unduly prejudicial to the complainant's mill there located and unduly preferential of competitors' mills located on routes over which joint rates presently apply. We further find that it is necessary and desirable in the public interest that the unlawfulness thus found to exist be removed by the estab-

lishment of the latter joint rates over routes via Milton-Freewater, with transit at that point.

An appropriate order will be entered.

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 2, held at its office in Washington, D. C., on the 14th day of July, A. D. 1958.

No. 32015

PRESTON-SHAFFER MILLING COMPANY

v.

GREAT NORTHERN RAILWAY COMPANY, ET AL.

This proceeding being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been made, and said division having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which report is hereby referred to and made a part hereof:

It is ordered, That the defendants named in the complaint, according as they participate in the transportation, be, and they are hereby, notified and required to cease and desist, on or before October 23, 1958, and thereafter to abstain, from publishing, demanding, or collecting for the transportation of wheat and wheat products, in carloads, from points in Montana described in the succeeding para-

graph hereof to points in Oregon south of Portland, Ore., and to points in California, rates which exceed those on the basis prescribed in the next succeeding paragraph:

It is further ordered, That said defendants, according as they participate in the transportation, be, and they are hereby, notified and required to establish, on or before October 23, 1958, upon not less than 30 days' notice to this Commission and to the general public in the manner prescribed in section 6 of the Interstate Commerce Act, and thereafter to maintain and apply to the transportation of wheat and wheat products, in carloads, from points in Montana on the lines of the Great Northern Railway Company east and south of Cut Bank, Mont., including Cut Bank, to points in Oregon south of Portland and to points in California on the lines of the Southern Pacific Company and The Atchison, Topeka and Santa Fe Railway Company, over the routes of the Great Northern Railway Company to Spokane, Wash., Union Pacific Railroad Company to Portland, Ore., with transit at Milton-Freewater, Ore., thence the Southern Pacific Company (in connection with The Atchison, Topeka and Santa Fe Railway Company to destinations on the lines of the latter carrier), rates which shall not exceed the lowest joint rates concurrently in effect from and to the same points over other rail routes.

And it is further ordered, That this order shall continue in force until the further order of the Commission.

By the Commission, division 2.

HAROLD D. McCOY,
Secretary.

(SEAL)

APPENDIX D

INTERSTATE COMMERCE COMMISSION

No. 32015

PRESTON-SHAFFER MILLING CO.[1]

v.

GREAT NORTHERN RAILWAY COMPANY, ET AL.

Decided ———————

1. Rates on wheat and wheat products, in carloads, from origins on the lines of the Great Northern Railway Company in Montana to destinations in Oregon south of Portland and in California over routes through Milton-Freewater, Ore., not shown to be unreasonable or unduly prejudicial.
2. Through routes and joint rates on wheat and wheat products, in carloads, from origins on the lines of the Great Northern Railway Company to destinations in Oregon, south of Portland and in California through Milton-Freewater, Ore., for transit found not shown to be necessary or desirable in the public interest. Complaint dismissed.

S. J. Wettrick for the complainant.

R. Paul Tjossem and *Robert F. Garing* for the defendants.

[1] As described in the report, Centennial Mills, Inc., Seattle, Wash., is successor in interest to the indicated complainant.

REPORT PROPOSED BY EDWARD L. BOISSEREE, EXAMINER

Complainant corporation alleges by complaint filed June 19, 1956, that the combination rates[2] applicable on wheat and wheat products, in carloads, from stations on the defendant Great Northern Railway Company in Montana to destinations in Oregon south of Portland and in California over the route of the Great Northern[3] to Spokane, Wash., Union Pacific to Portland, and connections beyond, with transit at Waitsburg, Wash., Milton-Freewater and Athena, Ore., are unreasonable and unduly prejudicial. The Commission is asked to prescribed reasonable, nonprejudicial joint rates for the future and, if necessary, establish through routes under the provisions of section 15(3) and (4) of the act.

When the complaint was filed, the complainant owned and operated flour mills and adjoining elevators at Waitsburg, Milton-Freewater and Athena. Evidence was submitted by the complainant at the initial hearing, in October of 1956, but the defendant Great Northern, the only defendant to appear in opposition to the complaint, was granted an extension of time to March 1, 1957, to complete preparation of its evidence in reply. Complainant was authorized to file evidence in rebuttal by March 20, 1957. By stipulation this

[2]Rates are stated in amounts per 100 pounds and are those in effect October 1, 1956.

[3]The names of the defendants and other railroads with the abbreviations used herein are as follows: The Great Northern Company, Great Northern; Union Pacific Railroad Company, Union Pacific; Southern Pacific Company, Southern Pacific; The Atchison, Topeka and Santa Fe Railway Company, Santa Fe; the Chicago, Milwaukee, St. Paul & Pacific Railroad Company, the Milwaukee; and The Northern Pacific Railway Company, Northern Pacific.

further presentation was submitted in the form of verified statements. Subsequent to the receipt of this further evidence but prior to the filing of briefs the parties requested additional time to make a supplemental showing as to the current ownership of the indicated flour mills. Verified statements were received from the parties in June and briefs were filed July 15, 1957.

The record as now constituted shows that the complainant corporation sold its flour business and the flour mill at Milton-Freewater to the Centennial Mills, Inc., of Seattle, Wash., in April 1957 and that the latter company has been operating the mill since May 1 of this year. Centennial Mills, Inc., also owns and operates flour mills at Spokane, and Wenatchee, Wash., and Portland, Ore., and its traffic manager originally participated in this proceeding as a witness for the defendant Great Northern. Because of its change in interest, this company now adopts the testimony of the title complainant and asks that it be substituted as complainant; and that the prayer of the complaint be granted with respect to rates applicable over routes via Milton-Freewater. The mills at Waitsburg and Athena have ceased operations as flour mills and allegations in the complaint with respect to these mills will not be further considered. The defendants have no objection to the substitution of Centennial Mills, Inc., as complainant and that term as used subsequently herein will have reference only to this company.

The mill at Milton-Freewater is located in northwestern Oregon and is served by the Union Pacific and Northern Pacific. It has a capacity of 2,400 hundred weight of flour per day. Since about 1947 this mill has been used largely for the milling of flour for the commercial bakeries of Cali-

fornia. Prior to that time, the Preston-Shaffer Company supplied flour to the California bakeries from a mill that it owned and operated at Pendleton, Ore. The latter mill was destroyed by fire in 1947 and the production of the bakery flour moved to the other mills which prior to that time were used generally for the production of family flour. Since 1925, with the development of the large bakeries and the trend toward commercial production of bread, the flour mills in the Pacific Northwest have been active in the California market. That State with its increasing population, particularly in the larger cities, and its deficit in the production of flour was a principal market for the Preston-Shaffer Company and other mills in the Pacific Northwest.

Prior to World War II, the mills of the Preston-Shaffer Company that supplied flour to these bakeries obtained the necessary grain in Montana. The grain was milled in transit and the flour shipped to Portland under the joint rail rates applicable from the Montana origin to that destination. From Portland, the flour was shipped by water transportation to California destinations under the comparatively low coastwise steamship rates. For the period from 1938 to 1941, the rail-water rates from Montana to San Francisco and Los Angeles were lower than the all-rail rates from and to the same points. During World War II, the water service was discontinued but the water competitive port-to-port rail rates between Portland and California were continued in effect until September 1, 1947, when orders of this Commission withdrawing fourth section relief to maintain such rates became effective. At this point, the normal rail rates from Montana origins to California became effective. Over routes via Milton-Freewater, the normal rates from origins on the Great Northern are, as hereinafter described, the combina-

tion of the rate from origins to Portland with the rate applicable from that point to final destination. Such rates are somewhat higher than the joint rate applicable from the same origins to California over other routes.

Rates on wheat and wheat products from Montana origins to the Pacific Coast were originally prescribed by the Commission in *Grain and Grain Products,* 205 I.C.C. 301, 215 I.C.C. 83. From the Central Montana group including central and north central areas of the State, a rate of 39 cents was prescribed to North Pacific Coast terminals such as Portland. The present rate as a result of subsequently authorized increases is 72 cents. That rate is applicable from Montana groups origins on the Great Northern to Portland via the route of the originating carrier to Spokane and the Union Pacific beyond. Transit is extended under that rate at complainant's mill at Milton-Freewater. On traffic destined to California as well as points in Oregon south of Portland, the joint rate from the same Montana origins is not applicable over the route just described and connections beyond Portland. On traffic from these Great Northern origins to San Francisco and Los Angeles, for example, the joint rate fixed in *Grain and Grain Products, supra,* was 65 cents and with the increases subsequently authorized is now $1.185. The joint rate was required to be published only over routes via designated Washington and Oregon gateways and via Butte, Mont. On grain stopped at complainant's Milton-Freewater mill and later moved through Portland to destinations beyond to the south in Oregon or in California the applicable rate from central Montana origins on the Great Northern is a combination of the 72 cent rate to Portland and the published rate from the latter point to final destination. To San Francisco the rate from Portland is 77 cents so

the total rate from the Great Northern origin in central Montana via Milton-Freewater is $1.49 or 30.5 cents more than the joint single-factor rate of $1.185 applicable over the other routes indicated.

In 1948, following the cancellation of the reduced rail port-to-port rates from Portland to the California destinations, the Preston-Shaffer Company sought an adjustment of rates through an appeal to the Great Northern to apply the joint rates over routes via its mills. Further negotiations were delayed pending a final decision in *General Mills Inc. v. Great Northern Ry. Co.*, 269 I.C.C. 457. In the indicated proceeding decided December 19, 1947, the Great Northern's failure to establish transit provisions at Great Falls, Mont., in connection with the through rates on wheat and wheat products from Montana via routes through Butte, Mont., to destinations in California and Nevada was found to be unreasonable and unduly prejudicial. An appeal was taken by the Great Northern and the report of the Commission was sustained in *Great Northern Ry. Co. v. United States*, 81 F. Supp. 921, 336 U. S. 933. Negotiations between the parties were resumed in May 1956 and the Great Northern advised the Preston-Shaffer Company that it would not join in the publication of the joint rate over the route sought. The present complaint was instituted as a result of such action.

From Montana origins located on the Milwaukee and Northern Pacific the joint rates are applicable over routes via complainant's mill at Milton-Freewater to the considered destinations. The following table compares the rates applicable from representative origins in central Montana on such railroads with those applicable from Chester on the Great Northern over routes of movement via Milton-Freewater and competitive transit points to San Francisco and Los Angeles.

From	*To*	*Route*	*Transit Point*	*Rate*
Chester, Mont.,	San Francisco) Los Angeles)	GN-Portland-SP	Seattle	$1.18½
Chester, Mont.,	San Francisco) Los Angeles)	GN-Butte-UP Ogden-UP/SP	Ogden	1.18½
Chester, Mont.,	San Francisco) Los Angeles)	GN-Spokane-UP-Portland-SP	Milton-Freewater "	1.49 1.77
Three Forks, Mont.,	San Francisco) Los Angeles)	NP-Portland-SP	Milton-Freewater "	1.18½ 1.18½
Great Falls, Mont.,	San Francisco) Los Angeles)	MILW-Spokane-UP-Portland-SP	Milton-Freewater "	1.18½ 1.18½

Abbreviations: GN, Great Northern; SP, Southern Pacific; UP, Union Pacific; NP, Northern Pacific; MILW, Milwaukee.

To Oregon destinations south of Portland the situation is similar to that reflected in the above table. Joint rates are applicable to such points from Montana origins on the Northern Pacific and Milwaukee via complainant's mill at Milton-Freewater but higher combination rates are applicable from the Great Northern origins. The latter rates exceed the joint rates by amounts ranging from 7 cents on movements to Salem to 15.5 cents on movements to Klamath Falls.

At the time of the decision in *Grain and Grain Products, supra*, the joint rates did not apply from Montana origins to California destinations over routes through Butte, Mont., and Ogden, Utah, but only over the routes through Seattle and Portland in order to give the originating railroads their long haul. In that proceeding, the Commission required the establishment of the rates over the short routes through Butte. It did not order the establishment of the joint rates over the routes here sought. Subsequently, the Northern Pacific and the Milwaukee made the joint rates applicable via routes from Spokane to Portland via Milton-Freewater. To Portland and other North Pacific Coast Terminals, the prescribed joint rates from Montana are effective over the route of the

Great Northern to Spokane and Union Pacific beyond. But if the shipments move beyond Portland to the south, then the combination rates over Portland is the applicable rate on any particular shipment.

The wheat produced in Washington, Oregon, and Idaho is not generally suitable for milling into bakery flour. In 1955, the soft white wheat used for pastry and cake flour amounted to about 90 percent of the total wheat production in those States. Montana produces two kinds of wheat in volume. The hard winter wheat is generally used for family flour and the hard spring wheat grown most extensively in the central, north central and northeastern sections of Montana is primarily used to mill flour for commercial bakeries. The latter wheat has a higher protein content and a higher or stronger gluten quality which gives strength to the flour and enables it to withstand abuse and provide a large load volume. Many if not all of the flours contain blends of wheat but all of the bakery flour is milled from varying proportions of the hard spring wheat. In recent years, the commercial bakeries have insisted upon specification in their flour orders that make milling of the hard spring wheat essential.

Western millers obtain their supply of wheat for bakery flour generally from central and north central areas of Montana. The freight rates from these areas are lower to the Pacific Coast than to Minneapolis and Duluth, Minn., the eastern markets. The major portion of the spring wheat originates in areas adjacent to the lines of the Great Northern, particularly in the north central area of Montana, although there is some production along the lines of Milwaukee. The six-year average wheat production in central Montana, 1950 to 1955, was some 46 million bushels about equally

divided between winter and spring varieties of wheat. However, since 1950, there has been a substantial change. The spring wheat variety has declined from about 69 percent of the total harvested acreage in 1950 to only 27 percent in 1955, while the harvested acreage of winter wheat had a corresponding increase from 31 percent in 1950 to 73 percent in 1955. The production resulting from this harvested acreage shows a corresponding change. The spring wheat production declined from 26.3 million bushels in 1950 to 13.4 million bushels in 1955. Concurrently, the production of winter wheat increased from 12 million bushels in 1950 to 42 million in 1955.

The indicated shift in production was primarily due to the fact that winter wheat varieties are better able to withstand winter damage and, more importantly, the greater average yield of winter wheat more than offsets the higher prices paid for spring wheat. The defendant Great Northern originates about 79 percent of the hard spring wheat in the central and north central Montana. The remainder originates on the Milwaukee. In earlier years the Preston-Shaffer Company moved from 35 to 52 percent of its spring wheat requirements from origins on the Milwaukee. However, in recent years the production of the spring wheat has been largely concentrated in the more northerly areas in Montana adjacent to the lines of the Great Northern and that company was able during the 1955-56 crop year to procure only about 9 percent of its spring wheat requirements from Milwaukee origins. There has been certain instances, particularly during 1955, when the Pacific Northwest flour mills had to make spring wheat purchases in northeastern Montana where the freight rates to the Pacific Coast are higher than they are to the eastern markets. Joint rates from

this section of Montana to California over routes via the Milton-Freewater mill are also sought by the instant complaint but in most years all western purchases of the spring wheat are made in the Central Montana group.

A continuing ability to sell flour in the California market is the real basis for this complaint. Preston-Shaffer's sales to California bakeries in the past five years averaged about 70 percent of its total output. California consumes substantially more flour than it produces while the reverse is true as to Washington, Oregon, Montana, and Utah. The annual deficit in California is about nine million hundred weight. Preston-Shaffer sales in California have ranged from 922,000 hundred weight in 1951 to 1,018,000 hundred weight in 1955. That company was able to continue its sale in California and even increase them slightly despite the indicated rate disparity through substitution or switching of billing. This practice, permitted by appropriate tariff provisions, enables the miller to take an allowance for the rail freight charges paid on the movement of the grain to the mill or transit point and ship the milled product beyond the transit point at the remainder or balance of the rate applicable from the origin point of the grain to the destination point of the milled product. Billing of the Great Northern on grain originated at its Montana origins does not permit the movement of the flour or milled product beyond Milton-Freewater at the balance of the joint rate applicable from origin to destinations in Oregon south of Portland and in California. On flour moving to such points from Milton-Freewater even though milled from grain originated at the Great Northern origins, the Preston-Shaffer Company would surrender billing covering grain originations at other points, such as on the Milwaukee or origins in Washington and Oregon where

the company purchases white wheat, in order to move the milled product at the most favorable freight charges.

Flour movements to California points south to Stockton and San Jose from Milton-Freewater were limited by the amount of wheat originated by Preston-Shaffer at Milwaukee origins in Montana. On flour movements to northern California destinations the company surrendered billing on wheat moving inbound to the mill from Washington and Oregon destinations. As indicated, joint rates were applicable from these origins through Milton-Freewater. The Preston-Shaffer Company had encountered difficulty in making this substitution of billing on its outbound movements of flour to the indicated destinations because an increasing proportion of its wheat requirements came from origins on the Great Northern in Montana and as a result there was an insufficient amount of [illegible] billing to move the flour to California destinations at charges competitive with other mills. A further obvious complication is the disposition of the outbound tonnage represented by the inbound billing from the Great Northern origins. From July 1, 1955 to June 30, 1956, Preston-Shaffer Company purchased some 55 million pounds of wheat at Great Northern origins. On that tonnage, it used the billing on 37 million to move flour and mill feed to Portland and adjacent points to which the joint rate was applicable. The billing on the remaining 18 million pounds was about equally divided between export shipments of flour and wheat through North Pacific ports.

On some shipments of flour and mill feed, the Preston-Shaffer company was compelled to pay combination rates over Portland because of a lack of the necessary billing. These were restricted to movements to Oregon destinations where the difference between such rates and the joint rate

was comparatively small. During the crop year 1955-56, it shipped some eight million pounds of flour and mill feed to southern Oregon destinations on which it paid approximately $6,000 in transportation charges more than would have been due if billing had been available to enable it to move the tonnage at the balance of the joint rate. No shipments were made to California destinations on which the combination rates over Portland were paid.

The subsequent change in ownership of the flour mill at Milton-Freewater, the abandonment of the other two mills, and the substitution of Centennial Mills, Inc., as complainant changes the situation somewhat. The present complainant has mills located on the Great Northern at Spokane and Wenatchee, Wash., and at Portland, Ore., and the joint rates sought by the original complainant are applicable on wheat moving from Montana, Great Northern origins via such mills. Complainant pursues the objectives originally sought, however, because the Milton-Freewater mill is engaged almost exclusively in the milling of bread flour for the California bakeries and this mill is equipped to load cars or bulk shipment of flour. Complainant's other mills are not equipped to handle such shipments and this was assertedly an important consideration in buying the mill from Preston-Shaffer. In any event, the fact that it has other mills which can ship to the California markets at the joint rates applicable from origin of the wheat is no reason, accordingly to complainant, for not providing the mill at Milton-Freewater with the same privilege.

Generally, it is the position of the complainant that through routes presently exist from Montana origins via the Great Northern to Spokane, Union Pacific to Portland, Santa Fe or Southern Pacific beyond and that application of the

joint rates sought over such routes can be authorized under section 1 and 3 of the act. Complainant also submits that the evidence of record warrants findings that such through routes and joint rates should be established under the provisions of section 15(3) and (4) of the act, and it ask the Commission to so find. The defendant Great Northern is of the view that through routes do not presently exist; that the gateway of Spokane is commercially closed to complainant's mill at Milton-Freewater on grain originating on its lines in Montana; and that the issues herein are necessarily restricted to the establishment of through routes and joint rates under sections 15(3) and (4). This carrier has continually refused to join in the establishment of joint rates beyond Portland over the routes sought because the movement of wheat from origins on its lines via such routes would materially reduce the length of its haul. Participation in routes and rates from origins in Montana on its lines to Portland via Milton-Freewater and to California destination via Butte were established by action of the Commission. The Great Northern strongly adheres to the policy of holding traffic it originates to a movement on its lines for the greatest possible segment of the total transportation service.

It is contended by complainant that the existence of through routes from and to the considered areas are established by the fact that through routes and joint rates are maintained in connection with the Great Northern over all routes via Portland except over the one serving its Milton-Freewater mill; that such routes are presently in effect from Montana origins on the Milwaukee and Northern Pacific; and that through shipments have been made during 1955 and 1956 via the route of Great Northern to Spokane, Union Pacific to Portland, and Santa Fe or Southern Pacific beyond to destinations in southern Oregon.

As indicated by complainant, the existence or nonexistence of a through route is a factual question to be resolved upon the circumstances of the particular case. Recent proceedings before the Commission and the Courts have set the standard for the determination as to whether a through route exists. In *Denver & R. G. W. R. Co. v. Union P. R. Co*, 351 U. S. 321, the Court stated at page 327:

> In considering the question of through routes under 15(4) we begin with our recent holdings and opinions in *Thompson v. United States*, 343 U. S. 549; *United States v. Great Northern R. Co.*, 343 U. S. 562. We there emphasized the purpose of 15(4) to bar the Commission from compelling railroads to establish through routes resulting in trunk-line "short-hauls" without faithful observance of restrictive conditions imposed by that section. At the same time we recognized that Commission action is not necessary to the creation of through routes. We pointed out that a through route is ordinarily a voluntary arrangement, express or implied, between connecting carriers, and that the existence of such an arrangement depends upon the circumstances of particular cases. We said in *Thompson v. United States, supra*, at 557, that "in short, the test of the existence of a 'through route' is whether the participating carriers hold themselves out as offering a through transportation service".

As stated by the Court, the test is whether there is a "holding out" express or implied by the participating carriers to perform the through service. Here the facts do not show such a holding out by the Great Northern. There is, on the contrary, a course of action by that carrier that leads to an

opposite conclusion. It refused to join in the application of the joint rates over such route initially and through the maintenance of the higher combination of rates attempted to deter the movement of any wheat tonnage over routes which would result in short hauls for it. Evidence submitted by complainant shows that Great Northern's traffic officials refused to accede to several requests to permit the movement of the wheat from origins on its line via complainant's mill at the joint rates applicable over other routes where the carrier retained its long haul. Compare *Chicago M. St. P. & P. R. Co. v. Spokane, P. & S. Ry. Co.*, —— I.C.C. —— decided May 10, 1957.

The indicated movement to southern Oregon destinations made by complainant at the combination rates does not show a holding out to afford through transportation to California or even to those particular destinations from the considered origins. That question was effectively settled in *Thompson v. United States*, 343 U. S. 548 and in *Denver & R. G. W. R. Co. v. Union P. Co., supra*. At page 559 in the former decision, the Court stated, "Through service to points short of Omaha cannot be used as evidence of the existence of a through route to Omaha". While at page 329 in the latter, a limited movement of traffic at the higher combination rates was held to be insufficient to establish routes.

Complaint does not assail the lawfulness *per se* of the particular segments of the combination rates applicable from the Montana origins to Portland or from that point to destinations in southern Oregon and California. Those rates were fixed by the Commission in *Grain and Grain Products, supra*. The failure to apply the joint rates over the routes in question is assailed as unlawful. In view of the conclusion that through routes do not exist it is necessary now to con-

sider whether the record here warrants the establishment of through routes and the prescription of joint rates.

Section 15(3) of the act grants the authority to establish such routes and rates provided that after full hearing it shall be determined that they are deemed to be necessary or desirable in the public interest. Section 15(4) modifies the foregoing section in that it provides, that, except as provided in section 3 of the act and except where one of the carriers is a water line, the Commission may not require a railroad to embrace in such route or routes substantially less than the entire length of its railroad and of any intermediate railroad operated in conjunction and under a common management or control therewith, which lies between the termini of such proposed through route or routes, unless such inclusion of lines would make the through route unreasonably long as compared with another practicable through route which could otherwise be established, or unless the Commission finds that the through route is needed in order to provide adequate, and more efficient or more economic transportation. The foregoing provisions are subject to the further limitation that the Commission in prescribing through routes should to the extent consist with the public interest and the restrictions indicated give reasonable preference to the carrier which originates the traffic.

The establishment of the routes sought would assertedly increase the source of supply for California flour buyers and also the markets for Montana wheat and thus be necessary and desirable in the public interest. In addition, the complainant urges that the term "public interest" refers as much to the shipper who uses the service as it does the public generally and has a direct relation to the adequacy of the transportation service. Consequently, the Commission is asked to

find that the new routes are necessary or desirable since the existing service is inadequate because the wheat may not be transported over routes via the mill at Milton-Freewater through to the considered destination at rates equal to those available to mills located at intermediate points on other routes such as Seattle and Portland. Reliance is placed on *Denver & R. G. W. Ry. Co. v. Union P. Ry. Co., supra* and *Pennsylvania R. Co. v. United States,* 323 U. S. 588 to support the contention that the routes should be established even though such action may result in requiring the Great Northern without its consent, to embrace in such route substantially less than the entire length of its railroad.

The Great Northern challenges any assertion that the existing routes are unreasonable long and inadequate. It directs attention to the fact that all of the present routes except one are shorter than the route sought; that the Milton-Freewater mill is located in the wheat producing area of Washington and Oregon from which joint rates are applicable with transit at the indicated mill to California markets; and that the route sought will, if established short-haul the Great Northern and result in considerable loss of revenues. The defendant further asserts that there is no basis for a finding under section 3(1) of the act since the Milton-Freewater mill participates to a much greater extent in the California markets than the other mills of the complainant which have available the joint rates.

The through routes sought would obviously be desirable to complainant. Their establishment would permit the mill at Milton-Freewater to sell flour in California in competition with other mills located on the existing routes without dependency on substituted billing. However, the practice of substituting or switching of billing is followed generally by

all millers in order to ship grain or milled products beyond the transit point at the most favorable freight charges. Whether the establishment of the routes sought are necessary or desirable by interests other than complainant is not so clearly shown. The complainant asserts that such routes would prove beneficial to the California commercial bakeries and to the wheat producers in Montana. But there is no showing in this record by representatives of those interest that the present routes are inadequate or that there is any need for the ones asked for in this proceeding. In *Chicago M. St. P. & P. R. Co. v. Spokane, P. & S. Ry. Co., supra,* the Commission in commenting on the testimony of shippers of lumber and lumber products that they desired unrestricted routing at competitive joint rates in connection with transit shipments, stated: "While this undoubtedly would be desirable from the shippers' viewpoint, there is no clear showing it would be in the public interest or that it is needed to provide adequate and more effective or more economic transportation".

But even if complainant's interest in having rates from and to the indicated areas via its Milton-Freewater mill the same as those via other mills, including three of its own, be considered sufficient to satisfy the statutory requirements of section 15(3), it is encumbent, before establishing such routes, to consider the limitations in section 15(4). The statute precludes the establishment of routes that short-haul the originating carrier unless the inclusion of its lines makes the through route unreasonable long as compared with another practicable through route which might otherwise be established; or the through route proposed is needed in order to provide adequate and more efficient or more economic transportation. The routes presently maintained from

the Montana origins on the Great Northern are not unreasonably long. All of them with one exception are shorter than the route sought. The one exception exceeds the proposed route by only 63 miles to either San Francisco or Los Angeles. The following table compares the distances of the present route with the ones sought to those cities from the representative Montana point of Chester.

Transit Station	*To*	*Distance Miles*	*Route*
Spokane	San Francisco	1435.1	GN-Chemult-SP
	Los Angeles	1808.1	" " "
Wenatchee	San Francisco	1701.0	GN-Portland-SP
	Los Angeles	2074.0	" " "
Portland	San Francisco	1565.4	GN-Spokane-SP&S-SP
	Los Angeles	1938.4	" " " "
Milton-Freewater	San Francisco	1638.9	GN-Spokane-UP
	San Francisco		Portland-SP
	Los Angeles	2011.9	GN-Spokane-UP
	Los Angeles		Portland-SP

The Great Northern estimates that based on current tonnage moving via the Milton-Freewater mill, the revenue loss it will sustain if the routes sought are established amounts to $36,000 annually. The revenue loss will be much greater if the other mills located on the Union Pacific in northern Oregon seek and obtain similar relief. The carrier estimates the revenue loss under such an eventuality at an additional $115,000. If California sales by such mills displaced any flour now sold by mills located on the Great Northern by virtue of obtaining the through routes and joint rates sought, then the revenue loss would be correspondingly greater. The complainant now has a flour mill capacity of more than 7,000 hundred weight at its three mills located on the through routes presently available on traffic destined to California and southern Oregon from Great Northern origins

in Montana. This capacity is about three times that of the Milton-Freewater mill. About 70 percent of the flour production of the latter mill has been shipped to California despite the absence of through routes and joint rates.

As indicated, recent decisions of the Commission and the Courts have set forth well defined principle of construction with respect to the provisions of sections 15(4). The following excerpt from *Denver & R. G. W. R. Co. v. Union P. T. Co., supra,* is illustrative:

> Section 15(4) empowers the Commission to consider the interests of shippers and the kind of services they get and need as well as the interests of carriers in determining whether additional routes should be established to provide "adequate" and "more economic" transportation service. We have held that in determining this question the Commission should look beyond the mere adequacy of the carrier's physical operations "to the broader public interest which embraces service to shippers and the rates they pay". *Pennsylvania R. Co. v. United States,* 323 U. S. 588, 591-593. The duty of the Commission, as we there stated, is to try to strike a fair balance in satisfying the needs of shippers, railroads, and the public. This of course calls for the Commission to exercise its informed judgment, having in mind its statutory obligation to develop coordinate and preserve an adequate national transportation system.

The expression "more efficient or more economic transportation" applies to both carriers as well as shipper interests. In striking the fair balance referred to by the Court it is essential to review the interest of both. In the circumstances here presented complainant's interest in obtaining the new routes

is outweighted by the adverse effect the short-haul routes would have on the Great Northern.

Initially, evidence was presented to show that the absence of the through routes and joint rates subjected complainant to the payment of unduly prejudicial rates. With the substitution of the present complainant (originally indicated to be unjustly preferred by rates and routes maintained by the Great Northern over routes via mills at Spokane, Wenatchee, and Portland) the issue under section 3(1) is not stressed. A finding of a violation under that section would appear to be precluded by the decision in *Union Pacific R. Co. v. United States*, 132 F. Supp. 72, in which the Court stated at page 80:

> * * * The prohibition of section 3(1) is intended to prevent a carrier from giving preferences or advantages, over which the carrier has control, to one of the entitles named and not to another. It does not apply to a situation such as this where the comparison or preferences or advantages or prejudices and disadvantages is between the entities named when they are located on the lines of different carriers not acting in concert or collusion.

The cited decision was affirmed in *Denver & R. G. W. R. Co. v. Union P. Co., supra*, but the Court stated, "* * * we have no occasion to consider contentions raised under sections 3(1) and 3(4)." However, the foregoing expression is favorably referred to by the Commission in *Chicago, M., St. P. & P. R. Co. v. Spokane P. & S. Ry. Co., supra*. It is also established that more than 70 percent of the production of the Milton-Freewater mill has been shipped to California during recent years. This compares with some 30 percent of the production of complainant's three other mills. The evi-

dence is not sufficient to support a finding of unlawfulness under section 3(1) of the act.

The Commission should find that rates on wheat and wheat products, in carloads, from origins on the lines of the defendant Great Northern Railway Company in Montana to destinations in Oregon south of Portland and in California over routes through Milton-Freewater, Ore., have not been shown to be unreasonable or unduly prejudicial. The Commission should further find that through routes and joint rates on wheat and wheat products in carloads from origins on the lines of the defendant Great Northern Railway Company to destinations in Oregon south of Portland and in California through Milton-Freewater, Ore., for transit are not shown to be necessary or desirable in the public interest. The complaint should be dismissed.

APPENDIX E

Applicable Provisions of the Interstate Commerce Act

Section 3(1) (49 U.S.C.A. Sec. 3(1)):

It shall be unlawful for any common carrier subject to the provisions of this part to make, give, or cause any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic, in any respect whatsoever; or to subject any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever: *Provided, however,* That this paragraph shall not be construed to apply to discrimination, prejudice, or disadvantage to the traffic of any other carrier of whatever description.

Section 3(4) (49 U.S.C.A. Sec. 3(1)):

All carriers subject to the provisions of this part shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines and connecting lines, and for the receiving, forwarding, and delivering of passengers or property to and from connecting lines; and shall not discriminate in their rates, fares, and charges between connecting lines, or unduly prejudice any connecting line in the distribution of traffic that is not specifically routed by the shipper. As used in this paragraph the term "connecting line" means the connecting line of any carrier subject to

the provisions of this part or any common carrier by water subject to part III.

Section 3(5) (49 U.S.C.A. Sec. 3(5)):

If the Commission finds it to be in the public interest and to be practicable, without substantially impairing the ability of a common carrier by railroad owning or entitled to the enjoyment of terminal facilities to handle its own business, it shall have power by order to require the use of any such terminal facilities, including main-line track or tracks for a reasonable distance outside of such terminal, of any common carrier by railroad, by another such carrier or other such carriers, on such terms and for such compensation as the carriers affected many agree upon, or, in the event of a failure to agree, as the Commission may fix as just and reasonable for the use so required, to be ascertained on the principle controlling compensation in condemnation proceedings. Such compensation shall be paid or adequately secured before the enjoyment of the use may be commenced. If under this paragraph the use of such terminal facilities of any carrier is required to be given to another carrier or other carriers, and the carrier whose terminal facilities are required to be so used is not satisfied with the terms fixed for such use, or if the amount of compensation so fixed is not duly and promptly paid, the carrier whose terminal facilities have thus been required to be given to another carrier or other carriers shall be entitled to recover, by suit or action against such other carrier or carriers, proper damages for any injuries sustained by it as the result of compliance with such requirement, or just compensation for such use, or both, as the case may be.

Section 15(3) (49 U.S.C.A. Sec. 15(3)):

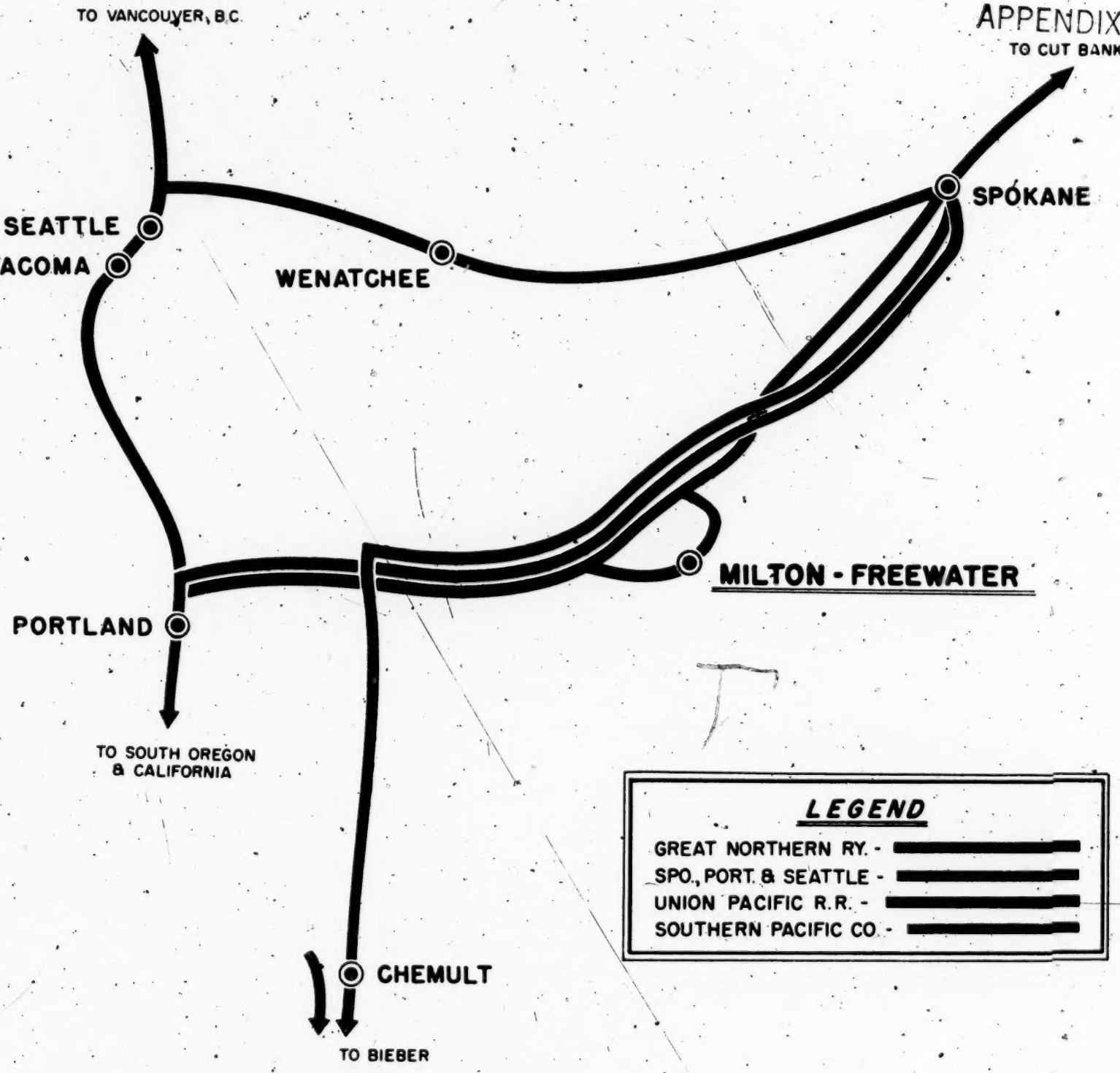
The Commission may, and it shall whenever deemed by it to be necessary or desirable in the public interest, after full hearing upon complaint or upon its own initiative without complaint, establish through routes, joint classifications, and joint rates, fares or charges, applicable to the transportation of passengers or property by carriers subject to this part, or by carriers by railroad subject to this part and common carriers by water subject to part III, or the maxima or minima, or maxima and minima, to be charged, and the divisions of such rates, fares, or charges as hereinafter provided, and the terms and conditions under which such through routes shall be operated. The Commission shall not, however, establish any through route, classification, or practice, or any rate, fare, or charge, between street electric passenger railways not engaged in the general business of transporting freight in addition to their passenger and express business, and railroads of a different character. If any tariff or schedule canceling any through route or joint rate, fare, charge, or classification, without the consent of all carriers parties thereto or authorization by the Commission, is suspended by the Commission for investigation, the burden of proof shall be upon the carrier or carriers proposing such cancelation to show that it is consistent with the public interest, without regard to the provisions of paragraph (4) of this section.

Section 15(4) (49 U.S.C.A. Sec. 15(4)):

In establishing any such through route the Commission shall not (except as provided in Section 3, and except where one of the carriers is a water line) require any carrier by railroad, without its consent, to embrace in such route substantially less than the entire length of its railroad and of

any intermediate railroad operated in conjunction and under a common management or control therewith, which lies between the termini of such proposed through route, (a) unless such inclusion of lines would make the through route unreasonably long as compared with another practicable through route which could otherwise be established, or (b) unless the Commission finds that the through route proposed to be established is needed in order to provide adequate, and more efficient or more economic, transportation; *Provided, however*, That in prescribing through routes the Commission shall, so far as is consistent with the public interest, and subject to the foregoing limitations in clauses (a) and (b), give reasonable preference to the carrier by railroad which originates the traffic. No through route and joint rates applicable thereto shall be established by the Commission for the purpose of assisting any carrier that would participate therein to meet its financial needs. In time of shortage of equipment, congestion of traffic, or other emergency declared by the Commission, it may (either upon complaint or upon its own initiative without complaint, at once, if it so orders, without answer or other formal pleadings by the interested carrier or carriers, and with or without notice, hearing, or the making or filing of a report, according as the Commission may determine) establish temporarily such through routes as in its opinion are necessary or desirable in the public interest.

APPENDIX F


TO VANCOUVER, B.C.
TO CUT BANK
SEATTLE
TACOMA
WENATCHEE
SPOKANE
MILTON - FREEWATER
PORTLAND
TO SOUTH OREGON & CALIFORNIA
CHEMULT
TO BIEBER
LEGEND
GREAT NORTHERN RY. -
SPO., PORT. & SEATTLE -
UNION PACIFIC R.R. -
SOUTHERN PACIFIC CO -